

**Letter of Findings: 01-20181567
Individual Income Tax
For the Year 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Individual met her statutory requirement of establishing that the Department erred in modifying her originally reported 2015 Indiana adjusted gross income to comport with the federal adjusted gross income as required by Indiana law.

ISSUE

I. Individual Income Tax - Federal Adjustment.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); I.R.C. § 62; *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Indiana Department of Revenue erred when it assessed Taxpayer additional Indiana income tax based upon an adjustment to her reported federal adjusted gross income.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who files Indiana income tax returns. Taxpayer filed a 2015 Indiana income tax return reporting approximately \$-700 in adjusted gross income. Based on that return Taxpayer - of course - did not pay Indiana income tax.

Taxpayer simultaneously filed her federal 2015 income again reporting \$-700 as adjusted gross income. The Internal Revenue Service ("IRS") reviewed the 2015 return and routinely adjusted the amount of Taxpayer's adjusted gross income. The IRS determined that Taxpayer received approximately \$29,000 in 2015 adjusted gross income. The Indiana Department of Revenue ("Department"), following the IRS's lead, adjusted Taxpayer's corresponding Indiana return. The Department's adjustment resulted in an assessment of additional Indiana income tax. Taxpayer disagreed with the adjustment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Federal Adjustment.

DISCUSSION

The issue is whether Taxpayer has met her burden of proof in establishing that the Department's assessment was wrong and that the originally filed federal and state returns were correct.

The Department found that there was a "discrepancy" between the carryover loss reported on the return and the carryover loss to which Taxpayer was actually entitled. When the IRS made an adjustment to the federal carryover eliminating most of the loss claimed, the Department did the same. In effect, both the IRS and the Department disregarded the claimed carryover amount increasing Taxpayer's adjusted gross income from \$-700 to about \$29,000 accompanied by an additional assessment of Indiana income tax.

As a threshold issue, it is the Taxpayer's responsibility to establish that the additional tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's

claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Thus, any taxpayer challenging an assessment is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. In computing what is considered the taxpayers' Indiana income tax, IC § 6-3-1-3.5(a) refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) states that - with certain modifications specific to Indiana law - I.R.C. § 62 defines "adjusted gross income" for Indiana taxpayers.

Taxpayer filled out her federal and state returns by hand. As a result, some portions of both returns are difficult to read. Taxpayer originally reported the loss carryforward as <-26,669> and - as provided for the instructions - claimed a \$3,000 offset against her 2015 gross income. The IRS's processing center either misread the total amount of capital loss or read the return as reflecting a *positive* \$29,000. The IRS has not been forthcoming in its explanation but it appears likely that Taxpayer's use of a minus sign along with brackets <> on either side of the number may have led the IRS to believe that the \$20,000 was a positive number.

Taxpayer has provided sufficient explanation establishing that the Department's assessment was incorrect and has met her statutory requirement - common to any Indiana assessment - of establishing that the assessment of additional income tax was "wrong." IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is sustained.

January 11, 2019

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